

NTSB Order No. EA-4046

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 13th day of December, 1993

Docket SE-12173

violating 14 C.F.R. 91.10.<sup>2</sup> We deny the appeal.

The Administrator's order came as a result of an incident that occurred on July 1, 1988, during which a Cessna 210-5 aircraft self-propelled more than 100 feet across a runway, down a slope, crashing through and into a hangar, and causing considerable damage to the Cessna, the hangar, and a helicopter inside the hangar. See, e.g., Exhibits ALJ-1, R-2, R-17, and Tr. at 38-39. The Administrator charged that respondent had not properly secured the Cessna before he hand-propped it.<sup>3</sup>

The FAA's investigator of this incident, William Koshar, testified, un rebutted, that pilots are expected to know information in its Flight Training Manual. A portion of this manual was introduced as Exhibit A-8, an excerpt of which states:

It is recommended that an engine never be "hand propped" unless a qualified person thoroughly familiar with the operation of all the controls is seated at the controls and the brakes set. As an additional precaution, chocks should be placed in front of the main wheels. If this is not feasible, the airplane's tail should be securely tied down.  
NEVER ALLOW A PERSON WHO IS UNFAMILIAR WITH AIRPLANE CONTROLS TO HANDLE THE CONTROLS WHEN THE ENGINE IS STARTED BY AN OUTSIDE SOURCE.

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<sup>2</sup>§ 91.10 (now 91.13(b)) read:

**Careless or reckless operation other than for the purpose of air navigation.**

No person may operate an aircraft other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.

<sup>3</sup>I.e., starting the engine by hand-rotating the propeller.

Mr. Koshar also testified that, if a tail tie-down was properly secured, it likely would not pull through the tie-down ring on the aircraft's tail and that, if the aircraft had been securely tied at the tail, braked, and chocked, the incident would not have occurred. Tr. at 100-101, 110.

Evidence at the scene indicated that the right wing tie-down rope had broken from the stress of the aircraft's movement, and the left tie-down had pulled out from its ground support. The manager of the airport testified, on behalf of the Administrator, that the tail tie-down had not been used.<sup>4</sup> She also testified that, when she reached the site shortly after the incident, she saw no chocks, nor did she recall any evidence or other information indicating that someone had been in the aircraft to control it.

Respondent, on the other hand, contended that he had tied down the aircraft at all three points, that the tail rope must have slipped and loosed itself, that he had chocked the aircraft, and that another pilot, Roger Sadlock, was sitting in the right seat at the time of the incident. Respondent testified that he had not seen Mr. Sadlock since.<sup>5</sup>

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<sup>4</sup>She testified that, shortly after the incident, when she went to pick up that tie-down, it offered resistance in the form of grass or weeds growing around it. Tr. at 46. See also Tr. at 17, 18.

<sup>5</sup>Those of the Administrator's witnesses who had talked to respondent on these subjects confirmed that he told them that he had used all three tie-downs and chocks. (They recollected no mention by him of anyone being in the aircraft at the time.)

The law judge, in affirming the complaint, found undependable respondent's statement that Mr. Sadlock was in the cockpit. She noted that respondent did not mention this fact, important as it was, to the FAA inspector on the scene, and she believed that, had a pilot been in the cockpit, he would have stopped the aircraft if only for self preservation.<sup>6</sup>

The law judge further found that the brakes on the aircraft were engaged, and that respondent had chocked the nosewheel. But she determined that he had not chocked the main wheels (as the Flight Manual directed), and that, although the wings had been tied down, the aircraft's tail had not been securely tied down (the Flight Manual's alternative to chocked wheels). The law judge concluded that, despite the allegedly poor condition of the wing tie-down rope and apparatus, the cause of the incident was respondent's failure to tie down the tail securely, and failure to have a qualified pilot in the cockpit.

Respondent's appeal centers on his perception of bias and animosity by the law judge. We see no indication that respondent was denied a fair hearing, however. We have reviewed each allegation carefully, and find no merit in respondent's contentions.<sup>7</sup> Indeed, the law judge assisted respondent in

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<sup>6</sup>Respondent testified that Mr. Sadlock could reach the brakes but otherwise could not operate the controls. The law judge found "ridiculous" (Tr. at 141) respondent's explanation that it was safer for him on the ground if the person in the aircraft did not sit where he could reach the controls. Respondent later amended his testimony (Tr. at 148) to say that the aircraft could be controlled from either seat.

<sup>7</sup>Respondent offers 16 instances (Appeal ¶¶s 1-3, 6-8, 11-16,

telling his story, and gave him considerable leeway in cross examination, over the Administrator's objections. See, e.g., Tr. at 36 (respondent calls witness a busybody), and Tr. at 46 (respondent offers derogatory comments on witness' testimony). Although there is one instance where the law judge was intemperate, having lost her patience (Tr. at 118-119, ¶ 24 of Appeal), we cannot disagree with her statement of the case (id.) and her perception up to that point that respondent's focus on the wing tie-downs had not been persuasive.

Respondent continues, on appeal, to focus on the wing tie-downs. It is his contention that the cause of the incident was not his performance but the poor condition of the right tie-down rope and the faulty manner in which the left tie-down was anchored in the ground. His appeal challenges the airport manager's testimony regarding both matters.

The law judge's acceptance of the airport manager's  
 (...continued)  
 18, 23-25) where the law judge is alleged to have acted improperly. We find no error in any of them. For example, a joint swearing-in ceremony (Complaint ¶ 2) does not belittle witnesses, nor does the transcript suggest that the law judge considered this case to be unimportant. Similarly, we do not interpret the law judge's folksy explanation to respondent that the Administrator had the burden of proof and respondent could just "sit back and twiddle [his] thumbs" because he was presumed innocent (Complaint ¶ 1) as derogatory to respondent or the process.

Respondent also claims (¶ 26) that the law judge was not competent to judge him because she was not sufficiently familiar with the aircraft. However, his support for this contention -- that she needed to ask if this aircraft used a starter button -- does not prove his point. Further, assuming only for purposes of argument that certain cases require specialized aviation knowledge, it is not valid in this case.

testimony is a credibility matter we have no basis to overturn. Respondent's challenges to the reliability of her testimony (Appeal ¶¶ 17-18) are unpersuasive. Contrary to respondent's suggestion, no bias sufficient to lead to perjury was established, nor did the witness react to respondent's rudeness towards her. There is also no inconsistency in her testimony. In his allegation of error ¶ 19, respondent has confused the testimony of different witnesses. The insurance adjustor, not the airport manager, testified that, when he arrived at the scene days after the incident, the ropes had been removed. Moreover, there is no inconsistency between Mr. Koshar's testimony and that of the airport manager (Appeal ¶ 20).<sup>8</sup>

We also agree with the law judge that, even if the two wing tie-downs did not restrain the aircraft through no fault of respondent, this would not excuse his violation if it were shown that respondent had not taken other prudent actions, such as specified in the Flight Manual, that would have held the aircraft in place. We note in this regard that the Flight Manual makes no mention of using wing tie-downs. It appears from the record that, although the Flight Manual directs more than one precautionary approach be used every time, either a secure tail tie-down or a pilot at the controls would likely have prevented the incident and that chocks on the main gear may have as well.

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<sup>8</sup>Respondent also suggests that Mr. Koshar's testimony is not reliable (Appeal ¶¶ 21-22). His examples are also not convincing. For example, with regard to ¶ 22, Mr. Koshar stated only that he was "not certain that age had anything to do with tinsel [tensile] strength." Tr. at 105.

Finally, particular to this case and contributing to a § 91.9 finding, we note that respondent was aware of the potentially weak wing tie-downs (Tr. at 134-135, 150, 153) and, therefore, should have known to take the precautions necessary to keep the aircraft in place. We, therefore, affirm the Administrator's order and the law judge's decision that respondent violated § 91.9.<sup>9</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The 90-day suspension of respondent's commercial pilot certificate shall begin 30 days from the date of service of this order.<sup>10</sup>

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

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<sup>9</sup>Because we agree with the Administrator here, we need not address the extent to which we owe deference to the Administrator's judgment that respondent violated § 91.9. See 49 U.S.C. App. 1471(a)(3)(D)(iii), as amended by P.L. No. 102-345, the FAA Civil Penalty Administrative Assessment Act of 1992 (the Board "shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration"). We note, however, our view that conclusions by the Administrator that various behaviors peculiar to particular cases are careless or reckless are not regulatory interpretations to which we are bound.

<sup>10</sup>For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).